

STATE OF MICHIGAN  
COURT OF APPEALS

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In re Parole of TIMOTHY J. GRIER.

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MACOMB COUNTY PROSECUTOR,

Appellee,

v

TIMOTHY J. GRIER,

Appellant,

and

PAROLE BOARD,

Appellee.

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UNPUBLISHED

December 15, 2011

No. 304908

Macomb Circuit Court

LC No. 2011-000218-AP

Before: MURPHY, C.J., and JANSEN and OWENS, JJ.

PER CURIAM.

Appellant, Timothy J. Grier (Grier), appeals by leave granted<sup>1</sup> the circuit court's order reversing the decision of the Parole Board, to grant parole to Grier. We affirm.

Grier first argues that the circuit court applied an improper de novo standard of review to the parole board's decision. We disagree. The parole board's decision whether to grant parole is reviewed for a clear abuse of discretion. MCR 7.104(D)(5)(b); *Hopkins v Parole Bd*, 237 Mich App 629, 632; 604 NW2d 686 (1999). "An abuse of discretion occurs when a court selects an outcome that is not within the range of reasonable and principled outcomes." *Borowsky v Borowsky*, 273 Mich App 666, 672; 733 NW2d 71 (2007). A review of the circuit court's opinion reflects that it applied this standard. The circuit court quoted from MCR 7.104(D)(5)(b),

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<sup>1</sup> *In re Parole of Timothy J. Grier*, unpublished order of the Court of Appeals, entered August 15, 2011 (Docket No. 304908)

which states that the appellant has the burden to establish that the parole board's decision was a clear abuse of discretion. After reviewing the evidence, the circuit court concluded that "the Parole Board's decision to grant [Grier] parole is clearly outside of the range of reasonable and principled outcomes." Thus, the record reflects that the circuit court applied the appropriate standard of review.

Grier's next argument on appeal is that the parole board's decision to parole him was not an abuse of discretion. We disagree.

The parole board's discretion regarding whether to grant parole is limited "by statutory guidelines, and whether it abused its discretion must be determined in light of the record and these statutory requirements." *Killebrew v Dep't of Corrections*, 237 Mich App 650, 652; 604 NW2d 696 (1999). "The appellant bears the burden of demonstrating an abuse of discretion, and the reviewing court may not substitute its judgment for that of the Parole Board." *Id.* at 653. MCL 791.233(1)(a) provides: "A prisoner shall not be given liberty on parole until the board has reasonable assurance, after consideration of all of the facts and circumstances, including the prisoner's mental and social attitude, that the prisoner will not become a menace to society or to the public safety." "An evaluation of a prisoner's mental and social attitude involves a subjective determination for which the parole guidelines cannot account." *Id.* at 655.

MCL 791.233e(1) requires the MDOC to develop parole guidelines to govern the exercise of the parole board's discretion and to assist the parole board in making decisions that enhance the public safety. In developing the parole guidelines, the MDOC must consider the offense for which the prisoner is incarcerated, the prisoner's institutional program performance, the prisoner's institutional conduct, the prisoner's prior criminal record, and other relevant factors. MCL 791.233e(2). Under 2011 ADC, R 791.7715(2), the following factors are among those that the parole board may consider in deciding whether parole is in the best interests of society and public safety: the prisoner's criminal behavior, including the nature and seriousness of the offenses for which the prisoner is incarcerated and the potential for committing further assaultive crimes; institutional adjustment, including findings of guilt on major misconduct charges; and the prisoner's personal history and growth, including a demonstrated willingness to accept responsibility for past behavior. 2011 ADC, R 791.7715(5)(b) provides that a prisoner with a history of predatory or assaultive sexual offenses shall receive a psychological or psychiatric evaluation before the release decision is made.

Here, the parole board's decision to grant parole fell outside the range of reasonable and principled outcomes. The parole board's decision was premised in part on assertions that are contradicted by the record. Fundamentally, the parole board's conclusion that Grier accepted responsibility for his two convictions of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(b)(ii) (victim was at least 13 years old but less than 16 years old and Grier was related to the victim), for ongoing sexual assaults of his adolescent sister-in-law between 1997 and 2000, is belied by numerous documents in the record establishing that he has consistently deflected responsibility and failed to appreciate the nature and seriousness of his crimes. The therapy termination report reflects that throughout six months of group therapy from November 2009 through May 2010, Grier portrayed himself as a victim. During the third month of therapy, Grier suggested that his 13-year-old victim had initiated sexual contact between them, including dressing in a way that caused him to be attracted to her. Grier admitted that he loves the victim

and wants to be in a relationship with her. Although at times Grier showed insight into his deviant behavior, by the final month of therapy Grier was continuing to portray his repeated acts of molestation as a “lost love story.” Grier expressed mixed emotions about his desire to contact the victim. The therapist noted that Grier could sexually assault another victim if he fails to recognize the negative effects of his actions and the nonconsensual nature of his relationship with the victim, but it was not clear if he had done so. The therapist explained, “If Mr. Grier is unable to grasp these concepts, the chances of recidivism will greatly increase.” Although the therapist opined that Grier’s coping strategies could be effective in preventing recidivism if he chooses to enact them, the therapist expressed no opinion regarding whether Grier would enact the strategies.

Further, the parole board itself concluded in October 2010 that it lacked reasonable assurance that Grier will not become a menace to society or to the public safety because he continued to lack insight into his sexual deviance, to take on the role of a victim, and to portray his crimes as a “love story.” The December 6, 2010, case summary report, prepared between the denial of parole in October 2010 and the grant of parole in January 2011, inconsistently stated that Grier “accepts responsibility” but then stated that, according to Grier, he turned to “his sister in law [sic],” i.e., a 13-year-old child, “for comfort. He made a sexual comment to the victim about learning about sex. Initially she didn’t respond but later she came back and expressed interest.” Grier’s characterization of his repeated acts of oral, vaginal, and anal rape of a 13-year-old child as him turning to the child “for comfort,” and his statement that the child “expressed interest” in learning about sex, reflects a rather disturbing failure to appreciate the nature and seriousness of his crimes, rather than an acceptance of responsibility.

The December 6, 2010, case summary report also incorrectly characterized the therapy termination report as concluding that Grier “is a minimal risk to reoffend at worst.” On the contrary, the therapy termination report suggested a very real possibility of recidivism. As discussed, during the final month of therapy, Grier “continued to present his case as though it was a lost love story.” The therapist opined that it was “imperative that Mr. Grier recognize the negative effects his actions had on his victim, that the relationship was not consensual, and *that there is a possibility that he will sexually assault another victim in the future, however it is not clear at this time if he has. If Mr. Grier is unable to grasp these concepts, the chances of recidivism will greatly increase.*” (Emphasis added.) The therapist viewed Grier’s coping strategies as “effective in preventing recidivism *if he chooses to enact them.*” (Emphasis added.) Although the therapist stated that Grier showed insight into the causes of his criminal behavior, the therapist did not express a view regarding whether Grier was likely to choose to enact his coping strategies. Further, the therapist opined that Grier needed continued therapy, but the record does not reflect that Grier has undergone any therapy since the termination of his sex offender program in May 2010. The therapist concluded that if Grier attempted to address issues on his own without formal counseling, it “would reflect criminal thinking and a possible increased risk for returning to patterns of thinking and behavior related to substance abuse, with an increased risk for re-offending behaviors.” Thus, the record refutes the assertion in the December 6, 2010, case summary report that the therapy termination report had concluded that Grier “is a minimal risk to reoffend at worst.”

The December 6, 2010, case summary report also incorrectly stated that Grier had a history of “non violent [sic] misdemeanors,” and that his adult history involved an “Ordinance

Violation.” In truth, the presentence investigation report (PSIR) reflects that Grier had two prior misdemeanor offenses, a traffic ordinance violation in 1989 and a domestic violence conviction for assaulting and inflicting serious injury in 1997, for which he completed a three-year term of probation in 2001. The victim’s letter and other documents reflect that the 1997 assault conviction related to Grier’s beating his wife with a handgun, for which he was charged with felonious assault, MCL 750.82, but ultimately convicted of assault and inflicting serious injury, MCL 750.81a. Grier admitted that he had assaulted his wife in the marital home. Thus, the December 6, 2010, case summary report failed to account for the assaultive nature of Grier’s criminal history.

Further, as the circuit court correctly observed, the February 27, 2009, Transition Accountability Plan (TAP) report noted highly probable issues with criminal thinking, cognitive behavioral, low empathy, and social isolation, seeming to contradict the ratings of low risk for violence and recidivism. Also, the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) Narrative Assessment Summary failed to reflect any prior weapons offense arrests or family violence offense arrests, despite Grier’s 1997 arrest for felonious assault involving his wife. The COMPAS Narrative Assessment Summary score of six or “highly probable” for substance abuse was based in part on the incorrect assertion that Grier “has not committed offenses while high/drunk.” The PSIR contains Grier’s admission that he was drinking heavily during the summer when he began molesting the victim. More recently, Grier was found guilty of a major misconduct charge for substance abuse in 2007 for failing to provide a urine sample. The MDOC Offender Supervision Summary Report and Parole Guidelines Scoresheet prepared on November 18, 2010, indicated a middle (potential high) assaultive risk.

Finally, on October 14, 2010, less than three months before granting Grier parole, the parole board stated that it “lacked reasonable assurance that Grier would not become a menace to society or to the public safety.” In denying parole in October, the parole board observed that Grier’s therapy termination report demonstrated that he “continues to lack insight into his sexual deviance. He continues to take on the role of a victim and to minimize his offense — in describing — [sic] CSC with a minor, as a ‘love story.’ Lack assurance at this time.”

When the parole board granted Grier parole less than three months later, the record contained no new facts that would support a conclusion that Grier had gained insight into his sexual deviance between October 14, 2010, and January 6, 2011, or that he had discontinued taking on the role of a victim and portraying his abuse as a “love story” during that brief time span. There is no indication that Grier underwent therapy in that time period or at any point after the termination of his sex offender program in May 2010, despite the therapist’s recommendation of continued therapy to prevent further sexual assaults. Thus, no principled basis existed to find the statutorily required reasonable assurance on January 6, 2011, in light of the evidence of record and the parole board’s own finding that reasonable assurance was absent less than three months earlier.

Accordingly, we conclude that the parole board’s decision to parole Grier fell outside the range of reasonable and principled outcomes and the trial court did not err by reversing that decision.

Grier's final argument on appeal is that the reversal of the parole board's decision to grant parole violates his constitutional right to due process because he relied on a *Cobbs*<sup>2</sup> evaluation in waiving his right to trial on the CSC I charges. We disagree. This Court reviews constitutional issues de novo. *People v Cain*, 238 Mich App 95, 108; 605 NW2d 28 (1999).

Grier was sentenced in accordance with a *Cobbs* evaluation by the trial court. In *Cobbs*, 443 Mich at 283, the Michigan Supreme Court held that “[a]t the request of a party, and not on the judge’s own initiative, a judge may state *on the record* the length of sentence that, on the basis of the information then available to the judge, appears to be appropriate for the charged offense.” (Emphasis in original; footnote omitted.) Further, “a defendant who pleads guilty or nolo contendere in reliance upon a judge’s preliminary evaluation with regard to an appropriate sentence has an absolute right to withdraw the plea if the judge later determines that the sentence must exceed the preliminary evaluation.” *Id.*

Grier acknowledges that he was sentenced in accordance with the *Cobbs* evaluation to the bottom of the guidelines. He contends, however, that the failure to grant parole upon the completion of his minimum sentence denies him due process. However, a *Cobbs* evaluation pertains only to the sentence imposed and does not guarantee that parole will be granted at any point. Grier has not established that a promise of parole was made, or could have been made, as an inducement to his plea. Therefore, Grier has not established that the failure to grant him parole constituted a denial of due process.

Affirmed.

/s/ William B. Murphy  
/s/ Kathleen Jansen  
/s/ Donald S. Owens

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<sup>2</sup> *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).